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August 21, 1997

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AUG 21 1997

Mr. William Caton
Acting Secretary
Federal Communications Commission
Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket No. 96-111

Dear Mr. Caton:

Enclosed for filing in CC Docket No. IB Docket No. 96-111 you will find an original and 11 copies of Comments of ABC, Inc., CBS Inc., National Broadcasting Company, Inc. and Turner Broadcasting System, Inc. in the above-referenced proceeding. Please date stamp the "stamp and return" copy of the petition for return by the messenger.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Randolph J. May

Enclosures

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AUG 21 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Amendment of the Commission's Regulatory
Policies to Allow Non-U.S.-Licensed Space
Stations to Provide Domestic and
International Satellite Service in
the United States**

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IB Docket No. 96-111

**CC Docket No. 93-23
RM-7931**

File No. ISP-92-007

**COMMENTS OF ABC, INC., CBS INC.,
NATIONAL BROADCASTING COMPANY, INC. AND
TURNER BROADCASTING SYSTEM, INC.**

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TURNER BROADCASTING SYSTEM, INC.

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SUMMARY

In the Further Notice, the Commission seeks comment on how its proposals in the DISCO II proceeding should be revised in light of the recent conclusion of the WTO Basic Telecom Agreement. In their earlier comments in the DISCO II proceeding, ABC, Inc., CBS Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. (collectively, "the Networks"), did not take a position on adoption of the ECO-Sat test generally, but urged the Commission not to apply the ECO-Sat test to fixed-satellite international video and associated audio transmission services, especially including occasional use services. The Networks explained that, for international video transmissions, they rely almost exclusively on satellite technology because fiber optic cables do not constitute a meaningful competitive alternative to satellites for cost, connectivity and operational reasons, and also that they rely heavily on non-U.S. licensed satellite systems, particularly the INTELSAT system. Therefore, as a practical matter, broadcasters and cablecasters cannot provide coverage of fast-breaking news or other special events on a timely basis if, as the Commission proposed in the NPRM, they first are required to comply with the ECO-Sat test.

The Networks commend the U.S. government, including the Commission, for its leadership role in negotiating the WTO agreement. They anticipate that, over time, implementation of the agreement by WTO members will be pro-competitive and bring substantial public interest benefits. Conclusion of the WTO agreement, however, does not affect the Networks' fundamental position in this proceeding because the Networks already have urged the Commission, in any event, not to apply the ECO-Sat test to fixed-satellite international video service transmissions.

Since the Networks comments were filed last summer, the marketplace for video transmission services has not changed in any way that is material for purposes of the Commission's consideration of the Networks' position in this proceeding. Indeed, in an order released just last week regarding a COMSAT request for streamlined tariff relief, the Commission found that, even for full-time services, fiber optic cables do not offer a viable alternative for international video service transmissions and that, even for full-time services, separate satellite systems do not yet match the global reach of INTELSAT in terms of connectivity and transponder capacity. And, the Commission emphasized that the Networks especially continue to lack sufficient alternatives for occasional television and audio transmission services.

In light of the immediacy of most of their international program transmission requirements and the lack of competitive video transmission alternatives, as set forth in these comments and the Networks' earlier comments in this proceeding and recently affirmed by the Commission, the Commission should recognize there are compelling public policy reasons for not applying an ECO-Sat test to video and audio transmission services.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of the Commission's Regulatory)	IB Docket No. 96-111
Policies to Allow Non-U.S.-Licensed Space)	
Stations to Provide Domestic and)	CC Docket No. 93-23
International Satellite Service in)	RM-7931
the United States)	
)	File No. ISP-92-007

**COMMENTS OF ABC, INC., CBS INC.,
NATIONAL BROADCASTING COMPANY, INC. AND
TURNER BROADCASTING SYSTEM, INC.**

ABC, Inc., CBS Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. (collectively, "the Networks"), by their attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby file these comments in response to the Further Notice of Proposed Rulemaking ("Further Notice") issued in the above-referenced proceeding, known as the DISCO II proceeding.^{1/} In the Further Notice, the Commission seeks comment on how its proposals in the DISCO II proceeding should be revised in light of the recent conclusion of the WTO Basic Telecom Agreement.

^{1/} Further Notice of Proposed Rulemaking, Amendment of Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Docket No. 96-111, released July 18, 1997.

I. BACKGROUND

In the DISCO II Notice of Proposed Rulemaking issued in May 1996, the Commission proposed to establish an effective competitive opportunities for satellites (“ECO-Sat”) test under which non-U.S. satellite systems generally will be able to provide satellite services to, from, or within the United States to the extent that foreign countries allow effective competitive opportunities for U.S. satellite systems to provide analogous services in their markets.^{2/} The Commission recognized that U.S. users of satellite services will benefit from non-U.S. satellites having greater access to the U.S. market, but it tentatively concluded that unrestricted general access to the U.S. market by non-U.S. systems may adversely affect competition in the U.S. Thus, the Commission proposed that any country wishing to provide services by its licensed satellites to, from, or within the United States should grant similar competitive opportunities to U.S.-licensed satellites both in its “home market” and in the applicable “route markets” that the non-U.S. satellite proposes to serve from U.S. earth stations.^{3/}

The Commission proposed to enforce the ECO-Sat test through the earth station licensing process. Any earth station user or operator in the U.S. that wishes to send or receive transmissions over a non-U.S. satellite would be required to apply individually on an earth station-by-earth station basis for authorization to communicate with the non-U.S. satellite.^{4/}

^{2/} Notice of Proposed Rulemaking, Amendment of the Commission’s Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, 11 FCC Rcd 18178 (1996).

^{3/} 11 FCC Rcd at 18188-89.

^{4/} 11 FCC Rcd at 18186.

In their comments and reply comments in this proceeding filed on July 15 and August 16, 1996, respectively, the Networks did not take a position on adoption of the ECO-Sat test generally, but urged the Commission not to apply the ECO-Sat test to fixed-satellite services used for the origination and distribution of international video programming materials, including especially international occasional use video transmission services. The Networks explained that for their overseas video transmission requirements, they rely almost exclusively on satellite technology because fiber optic cables do not constitute a meaningful competitive alternative to satellites for cost, connectivity and operational reasons. And the satellites upon which they rely include non-U.S. licensed systems, including in particular the INTELSAT system. Importantly, in order to fulfill their international newsgathering and programming missions, the Networks explained that they require the ability to transmit video and associated audio programming from anywhere to anywhere on short notice, using whatever transmission capacity is reasonably available at the time.

The Networks explained that, as a practical matter, broadcast and cable organizations cannot provide television coverage of fast-breaking news or other special events on a timely basis if, as the Commission proposed in the NPRM, they first are required to compile the legal and other information necessary to apply for ECO-Sat authority for a particular non-U.S.-licensed satellite and then wait for the Commission's consideration of the application. Accordingly, the Networks urged the Commission not to apply the ECO-Sat test to international video transmission services, but rather to allow broadcast and cable organizations to use any non-U.S. fixed satellite to transmit their international video programming materials.

Now, in light of the WTO Agreement, the Further Notice proposes to revise the DISCO II proposals so that an ECO-Sat analysis would not be required when evaluating whether to permit satellites licensed by WTO members to provide services covered by the WTO schedule of

commitments within the U.S., and between the U.S. and other WTO members.^{5/} On the other hand, an ECO-Sat test would be applied with respect to the home markets of satellites licensed by non - WTO member countries, regardless whether the route market is a WTO or a non-WTO member, and a separate ECO-Sat test would be applied to the route market when the route market is a different WTO member.^{6/}

The Commission also seeks further comment, in light of the WTO Agreement, concerning application of the ECO-Sat test to the intergovernmental satellite organizations (“IGOs”), such as INTELSAT, and to future IGO affiliates. The Commission notes that with regard to an IGO, because no single nation realistically can be deemed the home market of an IGO, it had proposed to evaluate access based on: (1) the openness of various route markets served by the IGO; (2) the total investment shares of member governments that permit U.S. satellites in their markets; or (3) a determination that IGO service would not diminish effective competition in the U.S.^{7/} As for IGO affiliates seeking access to the U.S. marketplace, the Commission proposes “to review the affiliate’s relationship to its IGO parent to ensure that grant would not pose a significant risk to competition in the U.S. satellite market, and that the affiliate is structured to prevent such practices as collusive behavior, cross-subsidization, and denial of market access, and that the affiliate does not benefit directly or indirectly from IGO privileges and immunities.”^{8/}

^{5/} Further Notice, at para. 18. The Commission proposes that opposing parties could still attempt to show “that grant would pose a very high risk to competition in the United States satellite market that could not be cured by conditions we could place on the license.” *Id.*

^{6/} *Id.*, at para. 23.

^{7/} *Id.*, at para. 31.

^{8/} Further Notice, at para. 36.

II. IN LIGHT OF BROADCASTERS' CURRENT LACK OF ALTERNATIVES TO SATELLITE CAPACITY AND THE IMMEDIACY OF THEIR PROGRAM TRANSMISSION REQUIREMENTS, THE NETWORKS' POSITION REMAINS THAT THE PROPOSED ECO-SAT TEST SHOULD NOT BE APPLIED TO NON-U.S. SATELLITES USED FOR FIXED SERVICE VIDEO TRANSMISSIONS

As ABC, CBS, NBC, and Turner detailed in their initial comments in response to the NPRM, they long have supported various measures to increase the competitiveness of the international communications marketplace.^{9/} As major users of international communications services in their operations, the Networks benefit from the emergence of competitive alternatives in terms of lower prices and improved service quality. The Networks commend the U.S. government, including the Commission, for its leadership role in negotiating the WTO agreement, and they anticipate that, over time, implementation of the agreement by WTO members will be pro-competitive and bring substantial public interest benefits. Conclusion of the WTO agreement, however, does not affect the Networks' fundamental position in this proceeding because the Networks already have urged the Commission, in any event, not to apply the ECO-Sat test to fixed-satellite international video service transmissions.

The Networks have set forth in great detail their position explaining why it would be inappropriate and unwise to apply the ECO-Sat test to video transmission services, especially occasional and short-term transmission services, in their initial and reply comments submitted in response to the NPRM,^{10/} and the Networks specifically request that these pleadings be incorporated

^{9/} See Comments of ABC, CBS, NBC, and Turner, July 15, 1996, at pages 7-11.

^{10/} See Comments and Reply Comments of ABC, CBS, NBC, and Turner, July 15, 1996, and August 16, 1996, respectively.

by reference herein and referred to by the Commission.^{11/} Therefore, the Networks will not burden the record by repeating the detailed presentation made in the earlier comments. Rather, they will simply add the following further brief comments to update the record and respond to specific Commission inquiries.

Since the Networks' comments were filed last summer, the marketplace for video transmission services has not changed in any way that is material for purposes of the Commission's consideration of the Networks' position in this proceeding. Indeed, in a decision released just last week, the International Bureau concluded that, even for full-time services, underseas fiber optic cables do not offer a competitive alternative to satellites for overseas video transmissions. The Bureau stated that "[t]he small capacity and fixed location of this single [US-UK] fiber-optic link mitigates against its existence having any significant impact on the provision of full-time video services."^{12/} And, the Bureau also concluded that, even for full-time services, separate satellite systems do not yet match the global reach of INTELSAT in terms of connectivity and transponder capacity.^{13/}

In their comments and replies filed in response to the two most recent COMSAT petitions seeking various forms of tariff relief, the Networks amply have demonstrated that, especially with regard to occasional television services, no material changes have taken place in

^{11/} In the Further Notice, the Commission says that it is "not yet addressing specific comments made on the Notice. Comments to both the DISCO II Notice and this Further Notice will be fully addressed in the DISCO II Report and Order." Further Notice, at note 3.

^{12/} COMSAT Corporation Petition for Partial Relief from the Current Regulatory Treatment of COMSAT World Systems' Video and Audio Services, File No. 14-SAT-ISP-97, August 14, 1997, at paras. 33.

^{13/} *Id.*, at 35. The Bureau did note that the systems of the competitors are expanding.

terms of the competitive situation since the Commission's August 1996 order.^{14/} As the Bureau has just reaffirmed in a carefully-considered analysis, the Networks continue to lack sufficient competitive satellite alternatives for occasional television and audio transmission services.^{15/} For operational and cost reasons, underseas fiber optic cables still are not considered to be a competitive alternative to satellites for occasional use video traffic.^{16/} The U.S. Government has taken the position in the context of the proposed restructuring of INTELSAT that occasional television service should be considered a "core" service treated differently than competitive communications services.^{17/} And in line with the U.S. Government position on this point, the bill recently introduced by Representatives Bliley and Markey concerning international satellites defines occasional television service as a "core" service subject to special treatment due to the lack of competitive alternatives and the unique service requirements of broadcasters.^{18/} Clearly, apart from whatever the Commission may conclude more generally with respect to other communications services, it should recognize there are compelling public policy reasons for not applying an ECO-Sat test to video and audio transmission services.

^{14/} See Networks Comments, RM-7913, File No. 14-SAT-ISP-97, January 17, 1997; Networks Comments, File No. 60-SAT-ISP-97, June 16, 1997; Networks Reply Comments, File No. 60-SAT-ISP-97, July 18, 1997.

^{15/} COMSAT Corporation Petition for Partial Relief From the Current Regulatory Treatment of COMSAT World systems' Video and Audio Services, File No. 14-SAT-ISP-97, August 14, 1997, at paras. 38-46.

^{16/} *Id.*, at para. 40; Networks Comments, June 16, 1997, at 19.

^{17/} Contribution of the Party and Signatory of the United States, INTELSAT Future Structure, IWP-3-5E W/4/96, 16 February 1996, at 5.

^{18/} H.R. 1872, 105 Cong., 1st Sess., Section 681(a)(12) (1997).

The Commission also seeks comment on the impact of the WTO agreement on intergovernmental satellite organizations. As the Networks have explained and the Commission has just reaffirmed, they remain heavily dependent upon INTELSAT for the capability of originating video transmissions all over the globe, as often as not from unpredictably remote locations lacking feasible alternatives to INTELSAT. Therefore, the Commission should not apply the ECO-Sat test to video transmissions using the INTELSAT satellites. This position is bolstered by the fact that, as the Commission points out, 49 INTELSAT member countries representing approximately 80% of its ownership made full or partial market access commitments for satellite services under the WTO agreement.^{19/} In view of these satellite commitments by a “critical mass” of INTELSAT administrations, in the Networks' view, the Commission should not apply the ECO-Sat test to INTELSAT.^{20/}

The Networks explained in their earlier DISCO II comments that currently there is a shortage of domestic satellite capacity which has driven up the rates for full-time and occasional video services in the past couple of years.^{21/} This capacity shortage has caused domestic occasional television rates to approximately double in little more than two years. In their August 1996 Reply Comments, the Networks supported COMSAT's request that it be allowed to provide a limited amount of domestic service using INTELSAT capacity. The Networks stated that “the addition of

^{19/} Further Notice, at para. 32.

^{20/} If the Commission were to disregard the position of the Networks and apply the ECO-Sat test to any video transmissions carried by INTELSAT, which it should not do, it certainly should grandfather any existing video leases, and apply the ECO-Sat test prospectively only to any new leases. By the same token, any existing services being provided by INTELSAT which are transferred to INC (or any other INTELSAT affiliate), should be grandfathered so as to be exempt from application of the ECO-Sat test.

^{21/} Networks Reply Comments, at 9.

this limited amount of capacity may have beneficial effects on competition in the U.S. domestic market and may ease the continuing shortage of domestic occasional use C-band capacity.”^{22/} The domestic capacity shortage persists today, and the Networks continue to believe that any competitive concerns raised by COMSAT/INTELSAT’s entry into the domestic marketplace by provision of a limited amount of capacity can be addressed effectively through regulatory requirements such as dominant carrier tariff regulation and imposition of competitive safeguards, rather than absolute market foreclosure of a potential new entrant.

^{22/}

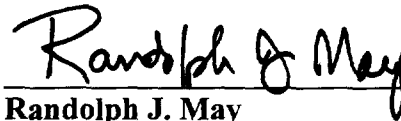
Id.

III. CONCLUSION

For the foregoing reasons, and the reasons discussed in greater detail the Networks' earlier comments submitted in this proceeding, the Networks request that the Commission take action consistent with the views expressed herein.

Respectfully submitted,

**ABC, INC.
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NATIONAL BROADCASTING COMPANY, INC.
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CERTIFICATE OF SERVICE

I, Teresa A. Pumphrey, do hereby certify that true and correct copies of the foregoing, **"COMMENTS OF ABC, INC., CBS INC., NATIONAL BROADCASTING COMPANY, INC. AND TURNER BROADCASTING SYSTEM, INC.,"** were served by hand or first-class U.S. mail, postage prepaid, this 21st day of August, 1997, on the following:

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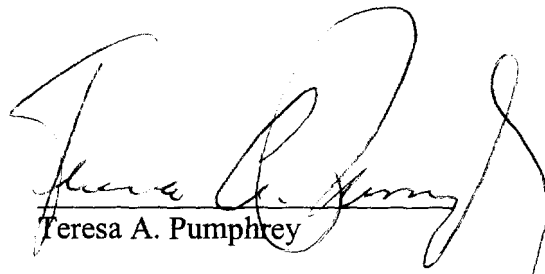
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